Crl Misc 16725-M of 2004

Mr.Y.M.Bhagirath, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 482 Cr.P.C. For quashing of FIR No. 4 dated 08-01-2004 registered under Section 306 IPC at PS Qadian, district Batala.

Learned counsel for the State on instructions from HC Sukhjinder Singh has made a statement that petition has been rendered infructuous as after conclusion of the trial, the petitioner has been acquitted on 23-01-2006.

In view of the statement made by the learned counsel for the State, this petition is dismissed as infructuous.

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 51310 of 2006 in

Crl A 1626-SB of 2006

Mr.Shiv Kumar, Advocate, for the applicant-appellant

Mr.Narender Sura, AAG, Haryana

It is not in dispute that against the sentence of one year and 6 months, the applicant has already undergone more than one year and one month's of sentence.

This application is allowed.

Sentence of the applicant-appellant is suspended.

Bail to the satisfaction of CJM, Faridabad.

05-09-2006 (Ajai Lamba)

* Mandeep * Judge

Crl Misc 41076 of 2006 in

Crl Appeal 559-SB of 2006

Mr.Baldev Singh, Senior Advocate, with Mr.Sudhir Sharma, Advocate, for the applicants-appellants

Mr.Eklavya Kumar, AAG, Punjab

This is an application under Section 389 Cr.P.C. for suspension of sentence.

Notice with regard to appellant No.3-Pritam Kaur was issued only because she is stated to be 73 years of age.

Learned counsel for the respondent-State is not able to give any assistance as the IO has not come.

Learned counsel for the applicants-appellants has produced a voters' Identity Card which reflects the age of Pritam Kaur as 67 years as on 01-01-2000.The photostat copy of the Election Commission's Identity Card is taken on record.

Considering the age of Pritam Kaur-appellant No.3, this application is allowed.

Bail to the satisfaction of CJM/Duty Magistrate, Mansa.

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 41333-M of 2006

Mr.Sandeep Arora, Advocate, for the petitioners

Mr.Eklavya Kumar, AAG, Punjab

Mr.Parveen Kumar, Advocate, for respondent NO.4

This is a petition under Section 482 Cr.P.C. for issuance of directions to the respondents Nos. 2 and 3 to safeguard the lives of the petitioners by providing police protection.

Apprehension is because the petitioners got married through love marriage against the wishes of respondent No.4 . Learned counsel for respondent No.4 has stated that the allegations made in the complaint are baseless. Respondent NO.4 has come to know about the marriage of the petitioners and has no objection of their continuing as husband and wife.

It is directed that in case the petitioners feel threatened on any count, they may file an application before respondent No.2-SSP, Hoshiarpur who shall take immediate steps to protect the life and liberty of the petitioners.

This petition is disposed of with the above observations.

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 36341-M of 2006

Mr.G.C.Rattan, Advocate, for the petitioners

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 482 Cr.P.C. for issuance of directions to respondents 2 to 5 to protect the life and liberty of the petitioners as they have married by way of inter caste marriage against the desires of respondent No.6.

Although notice of motion was issued only to respondent No.6 but despite service, he has not put in appearance.

Learned State counsel on instructions from HC Ravinder Singh states that the police having come to know about the dispute between the parties is ceased of the matter and is conducting enquiry. Affidavit shall be filed.

Adjourned to 17-10-2006. Reply be filed within 2 weeks from today.

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 18620-M of 2006

Mr.V.P.Singh, Advocate, for Mr.B.S.Chahar, Advocate, for the petitioner

Mr.Narender Sura, AAG, Haryana

This is a petition under Section 482 Cr.P.C. seeking directions to the respondents to conduct an enquiry on the complaints filed by the petitioner i.e. Annexures P-5 to P-9.

Reply has been filed by Rakesh Arya ASP, Hisar, on behalf of respondents 1 to 3 . Learned counsel for the respondent-State has drawn my attention to the Annexure R-2 to contend that enquiry has been conducted and, therefore, the cause does not survive. It has also been pointed out that petitioner is running a Karyana shop, however, under the guise of this Karyana shop, liquor is served to the people in the vicinity. Because the police officials have proceeded against the petitioner, in view of such allegations, the complaints have been filed against the police officials.

Having considered the matter, I do not find any reason to issue directions.

Dismissed.

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 48740-M of 2006

Mr.R.S.Bains, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

Learned State counsel seeks time as the IO has not come and, therefore, no assistance can be given to the Court by him.

Notice of motion was issued and interim relief was not granted.

Considering the fact that no assistance is coming forth from the respondent-State and the apprehension of the petitioners is reasonable, it is directed that the petitioner shall not be arrested.

In the meantime, in the event of arrest, the petitioner shall be released on interim anticipatory bail on furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer subject to the following conditions :-

i) the petitioner shall make himself available for interrogation as and when required ;

ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;and

iii) the petitioner shall not leave India without the previous permission of the Court

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 48128-M of 2006

Mr.N.S.Dandiwal, Advocate, for the petitioner

Mr.Eklavya Kumar,AAG, Punjab

This is a petition under Section 438 Cr.P.C. in a case registered under Sections 420/467/468/471/120-B IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act.

It is contended by the learned counsel for the petitioner that the petitioner is a public servant. The allegation is that the petitioner paid illegal gratification to Karamvir Grover for fabricating a false birth certificate. Karamvir Grover has already been allowed the concession of bail under Section 438 Cr.P.C. by the Special Court.

These facts have not been disputed by the learned counsel for the State on instructions from HC Jit Singh.

In view of the fact that the public servant himself has been allowed the concession of bail, this petition is allowed on the following conditions.

In the meantime, in the event of arrest, the petitioner shall be released on interim anticipatory bail on furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer subject to the following conditions :-

i)the petitioner shall make himself available for interrogation as and when required ;

ii)the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;and

iiii)the petitioner shall not leave India without the previous permission of the Court

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 47814-M of 2006

Mr.N.S.Sodhi, Advocate, for the petitioners

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 438 Cr.P.C. in a case registered unde rSections 363/366/376/451/34 IPC.

Considering the fact that the petitioner No.2 is 14 years of age, the arrest was stayed.

Learned counsel for the respondent-State on instructions from ASI Jaswinder Singh has made a statement that petitioners have joined the investigation and are not required for further interrogation.

As petitioner No.1 is a lady and petitioner No.2, as noticed above, is a minor, this petition is allowed on the following conditions.

In the meantime, in the event of arrest, the petitioners shall be released on interim anticipatory bail on furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer subject to the following conditions :-

i)the petitioners shall make themselves available for interrogation as and when required ;

ii)the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;and

iii)the petitioners shall not leave India without the previous permission of the Court

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 44769-M of 2006

Mr.K.S.Ahluwalia, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 438 Cr.P.C. in a case lodged under Sections 420/466/467/468/471 IPC.

Learned counsel for the respondent-State on instructions from HC Partap Singh has made a statement that the dispute between the complainant and the petitioner has been settled and the compromise has been effected and petitioner is not required for custodial interrogation.

In view of the statement made by the learned State counsel, this petition is allowed on the following conditions.

In the meantime, in the event of arrest, the petitioner shall be released on interim anticipatory bail on furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer subject to the following conditions :-

i)the petitioner shall make himself available for interrogation as and when required ;

ii)the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;and

iii)the petitioner shall not leave India without the previous permission of the Court

05-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 39236-M of 2006

Mr.Rakesh Nehra, Advocate, for the petitioner

Mr.Narender Sura, AAG, Haryana

This is a petition under Section 438 Cr.P.C. for bail in a case lodged under Sections 406/420/506 IPC.

Learned counsel for the respondent-State on instructions from Khushbir Singh ASI has made a statement that the petitioner has joined the investigation and is not required for any further investigation or custodial interrogation.

In view of the statement made by the learned counsel for the respondent-State,this petition is allowed. Order dated 11-07-2006 is hereby made absolute and it is directed that in the event of arrest, the petitioner shall be enlarged on bail on furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer, subject to the following conditions :-

i) the petitioner shall make himself available for interrogation as and when required;

ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

iii) the petitioner shall not leave India without the previous permission of the Court.

This order shall enure till 10 days after the petitioner receives a notice of filing of final report under Section 173 Cr.P.c. Within which period, the petitioner would be at liberty to apply for regular bail.

05-09-2006 (Ajai Lamba)

* Mandeep * Judge

Crl Misc 49860-M of 2006

Mr.L.S.Goraya, Advocate, for the petitioners

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 439 Cr.P.C. in a case lodged under Sections 326/328/506/34 IPC.

It has been contended that for an accident that allegedly took place on 06-10-2005, FIR has been registered on 01-04-2006 i.e. after nearly 6 months. There is no medical report to invoke Section 326 IPC.

Notice of motion was issued.

Learned counsel for the State seeks time on the ground that the brief is not available.

The matter cannot be argued in view of the nature of the case and also because liberty of the petitioners is involved. Petitioners were taken into custody on 01-04-2006, therefore, police remand cannot possibly be taken and, therefore, their further custody shall not serve any purpose.

Considering the totality of facts and circumstances of the case as noticed above, this petition is allowed.

Bail to the satisfaction of CJM/.Duty Magistrate, Gurdaspur.

5-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 47243-M of 2006

Mr.A.P.Singh, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 439 Cr.P.C. for bail in a case lodged under Section 15 of the NDPS Act.

Learned counsel for the petitioner has argued that the quantity of poppy husk recovered was non-commercial. It is further contended that the petitioner is a lady and is confined in jail along with her one year old child. Jail atmosphere is not conducive for the bringing up of the child for the obvious reasons.

Notice of motion was issued on 10-08-2006. While noticing these facts, on 24-08-2006, the State counsel sought time on the plea that his brief is not available.

The State counsel has made a statement today also saying that the brief is not available with him. Considering the fact that liberty of the petitioner is involved particularly in view of the fact that the petitioner is a lady with child who is confined in jail, the case is being decided on the basis of record.

I have gone through the record of the case.

Recovery of poppy husk as weighing 50 kgs is alleged. As per schedule, 50 kgs has been reflected in column number 6 as the commercial quantity. Commercial quantity has been defined under Section 2(viia) of the NDPS Act which provides for "means any quantity greater than the quantity specified by the Central Government by notification in official gazette". Prima facie finding the quantity of Narcotics to be non commercial and considering the fact that the petitioner is a lady with one year old child in jail, this petition is allowed.

Bail to the satisfaction of CJM, Sangrur.

05-09-2006 (Ajai Lamba)

* Mandeep * Judge

Crl Misc 45541-M of 2006

Mr.Arvind Singh, Advocate, for the petitioner

Mr.Narender Sura, AAG, Haryana

Mr.Parminder Singh, Advocate, for the complainant

I am not inclined to grant bail to the petitioner in view of the facts stated by the learned counsel for the State that there is one version by way of statements of Bir Singh, Birmati and Arvind that it was the petitioner who fired the shot on account of which Raj Kumar died. It is, however, pleaded that the petitioner is about 75 years of age.

In this regard, reliance has been placed by the learned counsel for the petitioner on the voter card wherein the petitioner is shown as 61 years of age as on 01-01-1994.

Respondents are directed to verify the age of the petitioner.

Adjourned to 14-09-2006.

5-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 41092-M of 2006

Mr.P.S.Hundal, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

Mr.Rajiv Verma, Advocate

This is a petition for bail under Section 439 Cr.P.C. in a case lodged under Sections 420/376/34/120-B IPC.

It is contended that rape would not be made out in view of the admitted circumstances that the petitioner has promised to marry the complainant. Learned counsel for the petitioner has stated that now good sense has prevailed upon the petitioner and the complainant, namely,Ranjeet Kaur and they have agreed to get married on 25-12-2006. The complainant is withdrawing the case against the petitioner in view of this fact and would be making statement before the trial Court in view of the compromise. The complainant has not yet been examined as a witness. It is pleaded that the complainant would file an application before this Court along with an affidavit indicating the factum of compromise.

Adjourned to 12-09-2006.

5-09-2006 (Ajai Lamba)
* Mandeep * Judge

Crl Misc 38100-M of 2006

Mr.Raman Mohinder, Advocate, for the petitioner

Mr.Eklavya Kumar, AAG, Punjab

This is a petition under Section 439 Cr.P.C. for grant of bail in a case lodged under Sections 323/324/325/326/341/148/149 IPC.

Learned counsel for the petitioner has argued that petitioner was in Southi-Arabia and, therefore, the order declaring him proclaimed offender cannot be taken into account for consideration of his prayer. It is contended that co-accused of the petitioner have been acquitted vide judgement dated 14-07-2004 as witnesses were declared hostile as they did not support the prosecution case. The petitioner has been in custody since 30-05-2006. Learned counsel for the respondent-State seeks time as the brief is not available with him. Vide order dated 10-07-2006 , notice of motion was issued for 24-08-2006. On 24-08-2006 also a similar prayer was made on behalf of the respondent. No further adjournment can be granted in view of the fact that liberty of the petitioner is involved.

Having considered the matter, this petition is allowed.

Bail to the satisfaction of CJM/Duty Magistrate, Malerkotla.

5-09-2006 (Ajai Lamba)
* Mandeep * Judge

CR 4866 of 2006

Mr.Vivek Goyal, Advocate, for the petitioners

This is a revision petition filed under Article 227 of the Constitution of India for quashing the order dated 05-08-2006 passed by the Motor Accident Claims Tribunal, Kaithal, whereby an application filed by the petitioners for release of the amount of compensation which was ordered to be deposited in a fixed deposit in a nationalised bank has been declined by the Tribunal.

Learned counsel for the petitioners states as the Tribunal has dismissed the application on the ground that no evidence has been produced by the petitioners, he may be allowed to withdraw this petition with liberty to file a fresh one and to produce the evidence in support thereof before the Tribunal for the release of the amount of compensation which was ordered to be deposited in a fixed deposit in some nationalised bank.

Allowed to do so. Dismissed as withdrawn. It shall, however, be open to the petitioners to file a fresh application for release of the amount of compensation in accordance with law.

14-09-2006 {Ajay Kumar Mittal}
*Mandeep * Judge

CM 8527-C of 2006 and

RSA 1180 of 2002

Mr.R.K.Battas, Advocate, for the applicants-appellants

Mr.P.S.Dhaliwal, Advocate, for respondent No.1

This is an application filed under Order 23 Rule 3 read with Section 151 CPC.

It has been averred in the application that parties to the appeal have compromised the matter. A copy of the compromise is placed on the record as Annexure A-1.It has further been prayed that the appeal be decided in terms of the compromise.

Notice of this application.

Mr.P.S.Dhaliwal, Advocate, accepts notice on behalf of contesting respondent No.1.

As per the compromise, the plaintiff-respondent has agreed to withdraw the civil suit filed by her bearing No.240 dated 15-05-1996 out of which the present appeal has arisen.

Learned counsel for the appellants does not dispute this fact. Let the statements of both the parties be recorded.

4-09-2006 {Ajay Kumar Mittal}

*Mandeep * Judge

Statement of Khushwinder Singh(who is identified by Mr.R.K.Battas, Advocate) son of Chand Singh, aged 33 years, resident of village Jaga Tehsil and District Mansa, Agriculturist on SA

I have entered into a compromise which is placed on record as Annexure A-1 with Amarjit Kaur-the contesting plaintiff-respondent. The compromise has been entered into out of my own free will and without any force or coercion. Annexure A-1 also bears my signatures. In terms of this compromise, the appeal be allowed and the suit be dismissed.

RO&AC {Ajay Kumar Mittal}

14-09-2006 Judge

Statement of Amarjit Kaur,(who is identified by Mr.P.S.Dhaliwal, Advocate) adopted daughter of Mohinder Singh, wife of Bhola Singh, resident of Lehewala, tehsil and district Mansa, aged 25 years on SA

I have entered into a compromise which is placed on record as Annexure A-1 with Khushwinder Singh-appellant. The compromise Annexure A-1 has been entered into out of my own free will and without any force or coercion. The compromise Annexure A-1 also bears my signatures. In terms of this compromise, the appeal be allowed and the suit be dismissed.

RO&AC {Ajay Kumar Mittal}

14-09-2006 Judge

RSA 1180 of 2002

Mr.R.K.Battas, Advocate, for the appellants

Mr.P.S.Dhaliwal, Advocate, for respondent No.1

After hearing the learned counsel for the parties, and perusing the record and in view of the statements made by Khushwinder Singh and Amarjit Kaur who are identified by their respective counsel, this appeal is allowed and the judgement and decree passed by the first appellate Court is set aside and consequently Civil Suit No.240 of 15-05-1996 is dismissed.

14-09-2006

*Mandeep *

{Ajay Kumar Mittal}
Judge

CIVIL REVISION 4661 OF 2006

Satinderpal Singh & others v Samarjit Sandhi & others

Present: Mr.B.R.Mahajan ,Advocate, for the petitioners

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

In this revision petition filed under Article 227 of the Constitution of India, the petitioner has made a prayer that order dated 23-05-2006 passed by the learned Civil Judge, Junior Division, Amritsar, be quashed whereby an application filed by the defendants-petitioners for de-exhibiting of unproved documents and return of those documents to the plaintiffs-respondents has been rejected.

The trial Court while deciding the application observed as under :-

> "The bare reading of the aforesaid section clearly shows that a document 30 years old produced from proper custody is per se admissible. Therefore, in the present case documents exhibited PW2 has come from proper custody and the same is 30 years old. So far as admissibility of other documents is concerned, the applicants-defendants did not incorporate the documents specifically. Accordingly, I find no merit in the present application. The facts of the case law cited supra are not applicable in the present case. Hence, the present application under consideration is dismissed."

No illegality or infirmity could be found in the aforesaid order which may warrant interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

Finding no merit in this revision, the same is hereby dismissed.

14-09-2006

*Mandeep *

{Ajay Kumar Mittal}
Judge

CIVIL REVISION 4889 OF 2006

Mam Chand v Daya Singh & others

Present: Mr.Sanjiv Gupta, Advocate, for the petitioner

CORAM; HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

In this revision petition, the petitioner is aggrieved against the order dated 09-05-2006 passed by the learned trial Court whereby the trial Court has set aside the ex-parte judgement dated 30-04-1996.

The trial Court on the basis of the pleadings of the parties, framed the following issues:-

"1.Whether the defendants Daya and etc. were prevented by sufficient cause from appearing in the Court on 16-04-1996?OPP

2.Whether the applicants-defendants never authorised Shri Madan Lal Advocate for appearing in the suit on their behalf?OPP

3.Whether the application for setting aside ex-parte decree is not maintainable?OPD"

The trial Court after appreciation of the evidence on record, came to the conclusion that the applicants-defendants have established that there was sufficient cause for setting aside the ex-parte judgement and decree. Accordingly, issues 1 and 2 were decided in favour of the respondents.

No ground for exercise of revisional jurisdiction is made out in this case which may warrant interference under Article 227 of the Constitution of India.

Accordingly, this petition is dismissed. However, the trial Court is directed to expedite the trial of the case and decide the same by 30-06-2007.

14-09-2006 {Ajay Kumar Mittal}
*Mandeep * Judge

CM 8527-C of 2006 and

RSA 1180 of 2002

Mr.R.K.Battas, Advocate, for the applicants-appellants

Mr.P.s.Dhaliwal, Advocate, for respondent No.1

This is an application filed under order 23 Rule 3 read with Section 151 CPC.

It has been averred in the application that parties to the appeal have compromise the matter. A copy of the compromise is placed on the record as Annexure A-1. It has further been prayed that the appeal be decided in terms of the compromise.

Notice of this application.

Mr.P.S.Dhaliwal, Advocate, accepts notice on behalf of contesting respondent No.1.

As per the compromise, the plaintiff-respondent has agreed that the present appeal be allowed and the civil suit filed by her hearing No.240 dated 15-05-1996 out of which the present appeal has arisen, be dismissed.

Let the statements of both the parties be recorded.

14-09-2006

*Mandeep *

{Ajay Kumar Mittal}
Judge

CM 8587-C of 2006 in

RSA 2937 of 2004

Mr.N.D.Achint, Advocate, for the applicant-appellant

This is an application for restroation of regular second appeal which was dismissed in default on 18-08-2006. The application is supported by an affidavit.

Having perused the application which is supported by an affidavit filed by the learned counsel for the applicant-appellant, the appeal is restored to its original number.

RSA 2937 of 2004

To come up for hearing on 30-10-2006 as per roster. Office to inform the learned counsel for the respondents.

14-09-2006 {Ajay Kumar Mittal}
*Mandeep * Judge

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH(O&M)

CIVIL REVISION 4520 OF 2005

Basanti Devi v Chandrup

CORAM; HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

Present: Miss.Seema Narang, Advocate, for the petitioner

This revision has been filed by the tenant against the judgements of the Rent Controller and the appellate authority whereby the tenant had filed a petition seeking decree for mandatory injunction to the effect that the respondent-landlord be directed to re-construct the shop in its original position.

As per averments made in the petition, the petitioner claimed that she was a tenant in the shop owned by the respondent-landlord which was situated at Delhi-Rohtak road and at the time of constructing the said shop, the respondent-landlord illegally and unauthorisedly encorached about 2 feet of brim of Rohtak-Delhi road. The Estate Officer, PWD (B&R) in view of the directions given by this Court had directed the tenant to remove the said encroachment. The tenant having failed to do so, the PWD authorities passed an order of demolition of the shop on 12-09-1997. It has further been averred that the respondent-landlord along with other persons had demolished the shop in dispute on the night of 16-09-1997 at about 2-30 am. It was thereafter that the petition was filed seeking direction to the respondent to re-construct the shop.

The learned Rent Controller after appreciating the evidence, while deciding the dispute, came to the following finding :-

"I am of the opinion that the disputed shop had become more unsafe for any business or habitation, when it was demolished by the PWD officials and it cannot be said that the disputed shop was got demolished by the defendant. There is no such rule by which the defendant can be directed to bring the disputed shop in original position in such a situation and hence, the issue is decided accordingly against the plaintiff."

Petition filed by the petitioner was accordingly dismissed on 24-04-2001. Appeal filed before the appellate authority also met the same fate.

No illegality or infirmity could be found in the order passed by the authorities below which may warrant interference by this Court in exercise of its revisional jurisdiction.

Finding no merit in this petition, this petition is accordingly dismissed.

Since revision petition has been decided on merits, no orders are required to be passed in the application for condonation of delay of 97 days in filing the revision petition.

15-09-2006 {Ajay Kumar Mittal}
* Mandeep * Judge

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

REGULAR SECOND APPEAL 3308 OF 2006

DATE OF DECISION : 15-09-2006

Inder Singh & others v Piara Singh & another

Present: Mr.V.B.Aggarwal, Advocate, for the appellants

Mr.Pritam Saini, Advocate, for the respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

This regular second appeal has been filed by the unsuccessful defendants arising from a suit for permanent injunction filed by the plaintiff which has been decreed by both the Courts below.

The plaintiffs-respondents have filed a suit for permanent injunction restraining the defendant from blocking rasta through rectangle No.54, Killa Nos.18 and 23 shown in the Aksijra and in the revenue records.

The facts as averred in the plaint are that plaintiff's father Chanan Singh son of Bhagwan Singh, Arjun Singh son of Basant Singh and Bakhtawar Singh son of Bhagwan Singh had purchased land measuring 56 kanals comprised in Khewat No.36 min, Khatoni No.93 min, Rectangle No.59, Killa Nos. 2(8-0), 8(8-0), 9(8-0), 12(8-0), 13(8-0), 10/1(2-0), 10/2(6-0), 11(8-0) situated at village Niwarsi, district Kurukshetra, according to jamabandi for the year 1955-1956, along with rasta of the width of 2 gathas existing in Khasra No.54/18,23 and rectangle No.59, Killa No.3 on eastern line, trees, khal, tubewelll etc. vide sale deed dated 10-12-1958. Chanan Singh father of plaintiff expired and plaintiff along with his brothers Dharam Singh and Kartar Singh have inherited the share in the aforesaid land. Plaintiff along with his brother Dharam Singh and father Chanan Singh had also purchased land

measuring 8 kanals comprised in khewat No.36 min, khatoni No.94 min, rectangle No.59, Killa No.3 situated at village Niwarsi, tehsil Thanesar, along with rasta and trees etc.vide sale deed dated 30-07-1959.There had been various sales and purchases of land in dispute. Defendants 1 to 13 i.e. Inder Singh and others purchased the land measuring 8 kanals comprised in khewat No.112, Khatoni No.209, Rectangle No.54, Killa No.18 for gair mumkin abadi and rasta as per jamabandi for the year 1995-1996. 2 gaths wide rasta was also left in this land towards eastern side. Since the date of purchase, father of plaintiff and after his death, plaintiff and other co-sharers are using the disputed rasta. The plaintiff averred that the defendants after the purchase of the aforesaid land are blocking the rasta forcibly and illegaly. Inspite of the request made by the plaintiffs, the defendants did not stop and this necessitated the plaintiffs to file the present suit.

After notice, respondents 1, 3 to 8, 10 to 13 filed their written statements jointly and took preliminary objections. It was averred that the plaintiff has no locus-standi to file the present suit and he has no right, title or interest in Khasra No.18 and defendants had purchased full Khasra No.18 and also constructed their houses and left private paths only for the inhabitants of Khasra No.18. It was further averred that there is no rasta in Khasra No.54/18 for ingress and outgress of plaintiff or any other person. In the replication, the plaintiffs denied the averments in the written statement. On the basis of the pleadings of the parties, the following issues were framed:-

"1. Whether the plaintiff is entitled to a decree of permanent injunction as prayed for?OPP

2. Whether the plaintiff has no locus standi to file and maintain the present suit?OPD

3. Whether the suit is not maintainable in the present form?OPD

4. Whether the plaintiff has no cause of action to file and maintain the present suit?OPD

5. Whether the plaintiff has not come to this Court with clean hands?OPD

6. Relief."

The trial Court after appreciating the evidence on record decided issue No.1 in favour of plaintiff-respondent. Para17 of the said judgement reads as under :-

> "From the entire oral and documentary evidence of the parties, as discussed above,it is proved that Tara Singh, while executing sale deeds Exhibits P-9 and P-10 had conferred a specific right upon vendees to use the disputed rasta and therefore their right to use the same cannot be defeated by the subsequent execution of sale deed by Manohar Singh son of Tara Singh in favour of defendants 1 to 13. The existence of disputed rasta is also proved from the revenue record as discussed above, however, from the testimonies of DW 1 ,DW 2 and DW 3, it is proved that they have constructed a wall upon the disputed rasta and have also dumped their garbage etc. in order to obstruct the right of the plaintiff to use the same. It is imperative to mention that existence of disputed rasta over khasra No.54/23 is admitted by Sant Singh-defendant No.14 in his written statement and is also duly reflected in photographs Exhibits P-1 to P-4 which have been proved by PW1-Prem Sagar. Since the existence and use of disputed rasta by plaintiff has been proved on the record, therefore, merely because the defendants have, during the pendency of the suit, blocked

the rasta by constructing a wall, suit of the plaintiff cannot be said to be defeated and the Court is not powerless and helpless and can mould the relief claimed by the plaintiff in order to dispense justice. Since the plaintiff has established his right to use the disputed rasta, therefore, defendants can be directed to remove the garbage and the wall existing upon the disputed rasta in order to restore the use of the same by the plaintiff . Accordingly, defendants are restrained from interfering in the use of the disputed rasta by the plaintiff and are directed to remove the garbage and the walll upon the same and to restore the disputed rasta in its original condition."

Accordingly, the suit filed by the plaintiffs was decreed. On appeal filed by the unsuccessful defendants before the first appellate Court , the judgement and decree of the trial Court was affirmed.

Learned counsel for the appellants has tried to assail the judgement to contend that disputed rasta was not in existence prior to the filing of the suit. On the basis of the appreciation of evidence on record, the trial Court and the first appellate Court had given concurrent finding of fact that as per sale deeds dated 10-12-1958 and 30-07-1959 Exhibits P-9 and P-10, it was clear that the plaintiff had a right to use rasta. The court further came to the conclusion that the existence of disputed rasta was also proved and that the defendants during the pendency of the suit blocked the rasta.

No question of law much less any substantial question of law arises for consideration in this appeal.

No illegality or infirmity can be found in the judgements and decrees passed by both the courts below which may warrant interference by this Court.

This appeal is accordingly dismissed.

15-09-2006

* Mandeep *

{Ajay Kumar Mittal}
Judge

REGULAR SECOND APPEAL 4169 OF 2003

Ram Bhaj son of Puran & others v The Akalgarh Co-operative Credit & Service Society Ltd. Through its Secretary & others

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

Present: Mr.Rameshwar Sharma, Advocate, for the appellants

Mr.Shekhar Moudgil, Advocate, for respondent No.1

AJAY KUMAR MITTAL, J.

This regular second appeal filed by the plaintiffs-appellants arises from a civil suit filed by the plaintiff wherein they had claimed permanent injunction restraining the defendant-Society from in any way interfering with the physical, peaceful and proprietory possession of the plaintiffs over the Gher mentioned in the plaint.

The plaintiffs have claimed that they were owners in possession of the property in dispute and the defendant has no right, title or interest in the suit property and since the defendant legally wanted to dispossess the plaintiffs from the suit property, they were entitled to an injunction and the defendant be restrained from dispossessing them from Gher which was being used by the plaintiffs for tethering the cattle heads, storing of dung cake etc. by erecting boundary walls.

Upon notice, the defendants appeared and contested the claim of the plaintiffs. The defendants in their written statement claimed that the plaintiffs are neither the owners nor in possession as they had sold the property in dispute in the year 1970 by registered sale deed No.1027 dated 06-11-1970 to the Akalgarh Sahkari Krishi Sewa Sahkari Sanstha Ltd. Akalgarh which was later on coverted into Akalgarh Co-operative Credit and Service Society Ltd.Akalgarh.

On the pleadings of the parties, the trial Court framed the following issues on 27-07-1992:-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 305 OF 1996

Ishwar Chand v Ashok Kumar & others

Mr.R.S.Longia, Advocate, for the appellant

Mr.D.P.Gupta, Advocate, for the respondents

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH

Admittedly, the injured-claimant Ishwar Chand was travelling in a Canter as a passanger. The matter was also placed before Lok Adalat for amicable settlement, if possible. Before the Lok Adalat, despite several adjournments, no compromise could be arrived at. Hence the matter has again come up for early hearing before this Court. Hon'ble the Apex Court in a judgement reported in National Insurance Co. v Baljit Kaur & others 2004(2) SCC 1 has categorically held that the policy under Section 147 of the Motor Vehicles Act does not cover passangers carried in goods vehicles.

Hence, the FAO being devoid of any merit, is hereby dismissed.

20-09-2006 {Uma Nath Singh}
Judge

* Mandeep *

Crl Misc 36516-M of 2006

Mr.G.C.Dhuriwala, Advocate, for the petitioner

Ms.Neelofer A Parveen, AAG, Punjab

Learned counsel for the petitioner submits that in pursuance to the orders dated 07-07-2006, the petitioner has joined the investigation and that nothing is to be recovered from him. The fact that petitioner has joined the investigation is not controverted by the learned State counsel. She, however, submits that paddy which was entrusted to the petitioner has not yet been recovered and certain documents also are to be recovered from him.

Be that as it may, the petitioner has already joined the investigation, therefore, the order dated 07-07-2006 is hereby confirmed. The petitioner, shall, however, join investigation as and when called by the Investigating Officer.

Disposed of.

22-09-2006
* Mandeep *

{Ashutosh Mohunta}
Judge

Crl Misc 23972-M of 2006

Mr.D.S.Pheruman, Advocate, for the petitioner

Mr.Sanjeev Kaushik, Advocate

Petitioner has filed this petition for grant of bail in a case registered under Sections 8,21,29 and 60 of the NDPS Act . One Naveed Masih was apprehended on Indo-Pakistan Border by the BSF personnel carrying 8 kgs of heroine . During interrogation, he named the petitioner also to be engaged in these smuggling of Narcotics.. Learned counsel for the petitioner contends that firstly no recovery has been effected from the petitioner and secondly the statement of his co-accused cannot be used against him. He submits that apart from that there is no other evidence against the petitioner.

On the other hand, learned counsel for the respondent relies upon the statement made by the petitioner Annexure P-3 before the IO wherein he admitted that he had been engaged in the smuggling of various types of Narcotics.

In view of the above, this application for bail is dismissed. The trial Court is, however, directed to conclude the trial expeditiously.

22-09-2006 {Ashutosh Mohunta}
* Mandeep * Judge

Crl Misc 5394 of 2006 in

Crl A 61-SB of 2006

Miss.Deipa Singh, Advocate, for the applicant-appellant

Mr.Ashish Kapoor, Addl.A.G., Haryana

Learned counsel for the appellant contends that the accused-Suresh has already undergone 2 years, 5 months and 10 days of actual sentence out of the total sentence of 7 years awarded to him under Sections 392/397 IPC. It is submitted that the complainant had stated in Court that he is unable to recognise the persons present in Court as the similar persons who had looted his car. In this behalf, it is contended that as the appellant was not identified, therefore, he is entitled to be granted bail.

On the other hand, learned counsel for the State submits that the appellant is a desparate criminal as he is already facing trial in 8 cases. Details of the cases have been given in the jail custody certificate . Learned counsel for the State has also placed reliance on jail custody certificate issued on 18-07-2006 by the Superintendent Jail Hisar which shows that 5 cases are still pending against the accused.

Keeping in view the fact that the appellant has been habitually committing various types of crimes, I do not think it a fit case to release the appellant on bail at this stage.

Dismissed.

22-09-2006 {Ashutosh Mohunta}

* Mandeep * Judge

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL 887-SB OF 1999

Mukesh Verma v The State of Punjab

Present: Mr.R.S.Aulakh, Advocate, for the appellant

Mr.M.S.Sindhu, Senior DAG,Punjab

CORAM: HON'BLE MR.JUSTICE VIRENDER SINGH

Appellant-Mukesh Verma stands convicted under Section 18 of the Narcotics Drugs and Psychotropic Substances Act (for short the Act)for allegedly keeping in his conscious possession 320 grams of opium without any valid permit or licence.

Vide impugned judgement dated 13-08-1999 by the learned Special Judge, Patiala, he has been sentenced to undergo RI for 10 years and to pay a fine of Rs.1 lac, in default thereof, to further undergo imprisonment for 2 years. Aggrieved by the said judgement of conviction and sentence, the appellant has preferred the instant appeal.

In brief, the case of the prosecution is that on 11-05-1998, Inspector Devinder Singh, SHO, PS Kotwalia, Patiala (PW5) accompanied by Head Constable Shinda Singh (PW2) and other police officials was on patrol duty in Gurbax Colony on the bank of Badi on Government vehicle (gypsy jeep). When the police party reached the bank of Polytechnic college for girls, the appellant was noticed coming from the opposite direction. He after seeing the police party tried to go towards ditches but was apprehended. One other person, namely, Narinder Singh was also accompanying him. Narinder Singh was apprehended by Utam Singh(another police official). Inspector Devinder

Singh suspected the appellant carrying some contraband article and showed his desire to search him according to the provisions of Section 50 of the Act apprising him that if he so wanted the search could be conducted in the presence of some Magistrate or a Gazetted Officer. The appellant wanted his search to be conducted in the presence of a Gazetted Officer. His statement Exhibit PD was recorded in this regard which was signed by him (appellant) and attested by witnesses. A message was sent to DSP Parambir Singh Gill (PW1) on wireless. In the meantime, one Harnam Singh, an independent witness was also associated in the police party. After some time, the aforesaid DSP reached the place. He after disclosing his identity enquired the appellant if he had any objection in getting his search conducted in his presence, who expressed no objection to it. In this regard, his consent memo Exhibit PC was also recorded which was signed by him (appellant) and attested by the aforesaid Harnam Singh, an independent witness, DSP and other official witnesses. Thereafter, personal search of the appellant was conducted which led to the recovery of 320 grams of opium wrapped in a glazed paper from the right pocket of the pant worn by him. 2 samples each were extracted and put in a small tin (dibbies) whereas the remainder was put in a big container. Samples of the remaining opium were separately sealed in parcels bearing impression PS (for Parambir Singh Gill). Specimen seal was also prepared at the spot. All the articles were then taken into possession vide memo Exhibit PA. Seal after use was kept by the aforesaid DSP. On the personal search of the appellant, a sum of Rs.102/-were recovered which were also taken into possession vide separate memo. Ruqa Exhibit PF was sent to the police station upon which a formal FIR was recorded. Rough site plan Exhibit PG was prepared at the spot. After recording the statements of the witnesses under Section 161 Cr.P.C., Inspector Devinder Singh deposited the case property with MHC Gurnam Singh (PW4). On the following day, the case property,and the appellant were produced before the

Ilaqa Magistrate who made his endorsement Exhibit PH/1 on the application Exhibit PH. The case property was then re-deposited with aforesaid MHC Gurnam Singh on the same day. Sample was sent to the Chemical Examiner for analysis. Report Exhibit PG found the contents of the sample to be that of opium. On the completion of the investigation, the appellant was challaned in this case. He was charged under Section 18 of the Act.

The prosecution in order to substantiate its case, has examined DSP Parambir Singh Gill (PW1), Head Constable Shinda Singh (PW2) and Inspector Devinder Singh (PW5) who are the witnesses to the recovery. Head Constable Bahadur Singh (PW3) deposed that after taking the sample from MHC Gurnam Singh (PW4) on 26-05-1998, he had prepared docket from the office of SSP, Patiala and despoited the same with the Analyst. MHC Gurnam Singh (PW4) tendered his affidavit Exhibit PE stating therein that on 11-05-1998 the entire case property was deposited with him and it was taken out on 12-05-1998 for the purposes of producing it before the Court and was re-deposited on the same day. He also talks of handing over the case property to Head Constable Bahadur Singh on 26-05-1998 for taking it to the FSL. Besides the aforesaid evidence, the report of the FSL was also tendered.

The plea taken up by the appellant was of denial stating that he was falsely implicated in this case.

The appellant in order to strengthen his defence has examined Hari Singh Verma, DW1 who had stated that one Ram Sarup of Patiala had taken a loan of Rs.10,000/-from him in January, 1992 which was not returned . On 07-05-1998, he had sent his son along with his friend Narinder Kumar to meet the aforesaid Ram Sarup for the purposes of collecting the money. Ram Sarup had been putting off his son and ultimately on 11-05-1998 when the appellant accompanied by Narinder Kumar again approached him, an altercation took place between them whereupon Ram Sarup called the police and at his instance

the appellant and Narinder Kumar were falsely booked in this case.

Harnam Singh, DW2 who was initially joined by the prosecution as an independent witness appeared in defence of appellant and made a statement to the effect that he had gone to the police station due to some dispute in the neighbourhood and the police obtained his signatures on ¾ papers and he was not aware as to what was written on these papers.

DW3 Prem Chand has deposed that he was residing in the neighbourhood of aforesaid Ram Sarup and at 2 pm on 11-05-1998 the appellant had gone to his house for the demand of money as earlier also he had approached him for the same purpose. Ram Sarup called the police at his residence and the appellant was taken by the police to the police station. Ultimately, the present case was planted upon him.

After appreciating the entire evidence, the learned trial Court has convicted and sentenced the appellant as stated above.

I have heard Shri R.S.Aulakh, Advocate, for the appellant and Shri M.S.Sidhu, Senior DAG and with their assistance have gone through the entire records.

Mr.Aulakh, very fairly states that so far as provisions of Section 50 of the Act are concerned, the same are complied with in the case in hand and, therefore, he cannot join issue on that aspect. He however, attacks the prosecution case on the point of missing of link evidence .It has come on record that Inspector Devinder Singh had deposited the case property with MHC Gurnam Singh on 11-05-1998 and the same was taken out of the Malkahana on 12-05-1998 for producing the same before the Ilaqa Magistrate along with the accused. If one reads his affidavit Exhibit PE , it is mentioned that the samples and the remainder of the opium were handed over to Head Constable Harmesh Singh of police post, division No.4 on 12-05-1998. Exhibit PH is an application dated 12-05-1998 moved before the learned Ilaqa Magistrate and

the same is prepared by Inspector Devinder Singh whereas the accused was produced before the learned Judge by SI Utam Singh. From all these facts, the learned counsel has made an attempt to demolish the case of the prosecution saying that the best witnesses who had handled the case property were SI Utam Singh and HC Harmesh Singh, but they have not stepped into witness box to state that till they handled the case property, it remained in tact. Non production of aforesaid two witnesses by the prosecution is fatal and it can be comfortably said that link evidence is missing in this case.

Mr.Aulakh then submits that the aforesaid flaw can be appreciated yet from another angle that the seal after use was kept by DSP Parambir Singh Gill who is also witness to the recovery and it was not handed over to Harnam Singh, an independent witness who was present at the spot. Sample has been sent to Analyst on 26-05-1998 i.e. after 15 days of the alleged recovery and, therefore, chances of tampering with the seal or the case property cannot be ruled out. This flaw is also damaging the prosecution.

Mr.Aulakh, then submits that the CFSL form was not prepared at the spot at the time of alleged recovery and the sample seal bearing the impression of PS which according to the prosecution was prepared on 11-05-1998 itself was just attached with the form sent for analysis. The learned counsel contends the CFSL form should have been prepared at the spot on the date of alleged recovery itself to rule out tampering with the sample at any stage. At the same time it should have been deposited in the Malkhana with the case property itself. But the same is not done in the instant case and, therefore, this vital weakess also doubts the case of the prosecution to a great extent. In support of his contention, Mr.Aulakh relied upon Bhola Singh v State of Punjab 2005(2)RCR(Crl.)520.

Mr.Aulakh, lastly submits that the plea of defence set up by the appellant is most plausible on the face of it and it can be safely inferred that he

has been falsely implicated in this case. Dwelling upon his arguments , learned counsel submits that the case of the prosecution as set up is that one Narinder Kumar was also apprehended by the police . However, his custody was handed over to SI Utam Singh. There is no evidence worth the name on the record to show that as to what was recovered from Narinder Singh who also happened to be with the appellant. The appellant was staying at Bhiwani(Haryana) whereas the present case has been registered in PS Kotwalia, Patiala (Punjab). The appellant is not previously involved in any case of Narcotics . He in this case has come up with a specific plea that he along with Narinder Kumar had gone to the house of Ram Sarup. One Ram Sarup of Patiala who owed money to his father Hari Singh Verma and ultimately on 11-09-1998 an altercation had taken place between him and aforesaid Ram Sarup, falsely implicated him in connivance with the police. The learned counsel while drawing the attention of this Court to the Court question put to father of the appellant who had appeared as one of the defence witnesses, wherein he has categorically stated that he had shifted his family from Patiala to Bhiwani in September, 1992. He also states that his son (appellant) was not involved in any case earlier. From this, the learned counsel wants to develop that the father of the appellant had some money dealings with aforesaid Ram Sarup for which the appellant had come to Patiala.Otherwise, possibly there could not be any reason to be present there.

In order to strenghen the defence , the learned counsel has also read out the statement of Harnam Singh son of Sadhu Singh, an independent witness to the recovery who was given up by the prosecution as having been won over and appeared as a defence witness. Attention of this Court has also been drawn to the statement of one Prem Chand ,DW3 who stated that there was an altercation between the appellant and Ram Sarup and thereafter Ram Sarup called the police who had taken away the appellant.

On the basis of the aforesaid submissions, Mr.Aulakh submits that

prosecution has not been able to prove its case beyond the shadow of reasonable doubt against the appellant and, therefore, he desreves acquittal.

Controverting the submissions advanced by Mr.Aulakh, Mr.M.S.Sidhu, Senior DAG, Punjab contends that the prosecution has proved the conscious possession of the contraband qua the appellant and he has no escape. He then submits that there was no reason that the police would falsely implicate the appellant . The possession is otherwise strengthened by the evidence of a senior police officer (DSP) who is also a witness to the recovery and, therefore, there is no reason to doubt it.

After hearing the rival contentions of either side and going through records very carefully, I am of the view that the prosecution has not been able to prove its case against the appellant to the and as such he deserves acquittal. I shall now be entering into a detailed discussion considering all the aspects of the case.

In my view, the the first limb of argument advanced by Mr.Aulkah with regard to link evidence, has lot of force in it and the prosecution case . Admitted position is that the case property was handed over to HC Harmesh Singh on 12-05-1998 as is clear from an affidavit Exhibit PE tendered by MHC Gurnam Singh (PW4). Application Exhibit PH is prepared by Inspector Devinder Singh as is clear from his signatures on it. Even otherwise, in his substantive statement he states that he had produced the case property before the Ilaqa Magistrate vide his application Exhibit PH on which the learned Magistrate passed the order Exhibit PH/1 and after that he had returned the case property and the chits with the seals in tact to MHC Gurnam Singh. This statement according to me is factually incorrect. The short order (zimni order) passed by JMIC, (Ilaqa Magistrate) on 12-05-1998 is reproduced as under :-

"Present: Accused in custody of SI Uttam Singh.

and one tin box seen and initialled.

Sd/-JMIC"

The aforesaid factual position indicates that Devinder Singh had not produced the accused and the case property before the Ilaqa Magistrate. As stated above, affidavit Exhibit PE indicates that the case property was handed over to HC Harmesh Singh on 12-05-1998. How it reached the hands of Utam Singh is not proved by the prosecution at all . The entire case property remained in the hands of HC Harmesh Singh and SI Utam Singh on 12-05-1998. It was thus, the bounden duty of the prosecution to produce these witnesses to prove the link evidence. The same is not done .In my considered view, it is a serious flaw in the case of the prosecution which cannot be just ignored. If one reads para 3 of the affidavit Exhibit PE tendered by MHC Gurnam Singh, he rather states that HC Harmesh Singh had deposited the case property with him on 12-05-1998 which is again contrary to the substantive statement made by Inspector Devinder singh.

It is rightly submitted by Mr.Aulakh, that the aforesaid flaw can be seen in the light of another drawback in the case of prosecution where the seal after use was not handed over to Harnam Singh, an independent witness in whose presence, the recovery was allegedly affected. No doubt, he was ultimately given up by the prosecution and was produced by the appellant as one of the defence witnesses. But , the fact that remains is that at the time of alleged recovery at least, the prosecution was banking upon Harnam Singh so as to give sanctity to the search and, therefore, the seal should have been given to him.However, the same is kept by DSP who himself was one of the witnesses to the recovery. If the seal remains with the police official irrespective of the rank who is otherwise a witness to the recovery, possibility of the case property being tampered with cannot be ruled out. There is no hard and fast rule that

the recovery is to be effected in the presence of an independent witness but once the prosecution banks upon it,then it should be free from all doubts. In the case in hand, I am doubtful about the same.

I am also in agreement with the submission advanced by Mr.Aulakh, with regard to the non-filling of the form of CFSL at the spot. Admitted position is that neither the CFSL form was prepared at the spot nor deposited in the Malkhana. This flaw alone is not being considered to be enough to discard the case of the prosecution in its entirety, but in my view, it does affect inter alia on other weaknesses as referred to hereinabove. Filling of CFSL form at the spot is a very valuable safeguard to ensure that the sealed sample is not tampered with till it is analysed by CFSL. In Bhola singh's case (supra) relied upon by Mr.Aulakh while discarding the case of the prosecution on the point of link evidence, this Court observed as under :-

"There is another circumstance creating doubt in the prosecution case. The prosecution has failed to prove the link evidence with regard to the seizure of the contraband till the same reached the office of

Chemical Examiner. PW3 SI Sukhwinder Singh, after sealing the sample parcels of the contraband as well as remaining contraband, handed over the seal to Surjit Singh, the independent eye witness, but said Surjit Singh has not been examined. It is well settled that till the case property had not been despatched to the Forensic Science Laboratory, the seal should not be available to the prosecuting agency and in the absence of such safe-guard the possibility of seal, contraband and the sample being tampered with cannot be ruled out. SI Sukhwinder Singh in his examination-in-chief stated that Form No.29 was prepared on 29-9-1999 on which specimen of seal was affixed. The said form was supposed to be deposited along with the sample and the case property in the Malkhana, but it is not clear from the statements of SI Sukhwinder Singh or any other prosecution witnesses that the said form was deposited in the

Malkhana on 29-9-1999 itself. In Emma Charlotte Eve v Narcotic Control Bureau, 2000(4) RCR (Criminal) 386 & Shaiffullah v State 49(1993) DLT 193, it was held that "where the seals remained with the police after use and the CFSL form was neither prepared on the spot nor deposited in the Malkhana, such circumstance would be fatal to the prosecution case." Filling of such form at the spot is very valuable safe-guard to ensure that the seal sample is not tampered with till its analysis by the F.S.L. The CFSL form should not only be prepared and sealed by the officer making seizure at the place where the case property is seized from the accused, it should also be sealed by the S.H.O. To whom the sample and the case property is handed over and the same should accompany the sample to Chemical Examiner. The idea behind taking such a precaution is to complete the material link in the prosecution evidence by eliminating the possibility of the sample being tampered with. The prosecution has miserably failed to prove the link evidence."

What I have noticed from the trial Court record, is that the seal impression bearing impression of PS is just pasted with the CFSL from. Seal

impression is prepared on 11-05-1998 as is the case of the prosecution. CFSL form is prepared on 26-05-1998 as is clear from the stamp, initials and the date of the concerned senior police official on it. There is no seal impression in column number 4 of CFSL form. The seal impression Exhibited as P1 during the trial does not bear the signatures of the Ilaqa Magistrate. Even in the Chemical Laboratory report Exhibit PJ, it is not mentioned that the seals were of a particular impression. The stamp put in routine indicates that the seals on the exhibits were agreeing with the sample seal. All these facts create a lot of doubt with regard to the investigation conducted in this case. Had the Investigating Officer filled CFSL form at the spot and produced before the Ilaqa Magistrate on the following day along with the case property for the purposes of verification, the Ilaqa Magistrate would have put his initials after cross checking

the same and this exercise could rule out all the chances of tampering with the case property or sample at any subsequent stage. In my view, this is the reason that this Court time and again is stressing upon filling up the CFSL form at the spot . In the case in hand, this vital flaw coupled with the aforesaid weaknesses is enough to make the case of the prosecution doubtful.

The defence set up by the appellant also appears to me somewhat plausible but I do not feel the necessity of entering into detailed discussion in this regard for the reasons that I am not dislodging the case of the prosecution on account of aforesaid drawbacks in it.

No other point has been urged before him.

As a consequece to the aforesaid discussion, the net result is that the proselcution has not been able to prove the conscious possession of the contraband qua the appellant to the hilt and, therefore, his conviction as recorded by the trial Court for the charge under Section 18 of the Act deserves to be disturbed. Ordered accordingly.

Resultantly, the instant appeal is allowed. Impugned judgement

dated 13-08-1999 passed by Special Judge, Patiala, is hereby set aside. The appellant is acquitted of the charge framed against him. He is stated to be in custody and shall now be released forthwith if he is not required in any other case.

25-09-2006 {Virender Singh}
* Mandeep * Judge